

HOUSE BILL 39

P5, P1

CONSTITUTIONAL AMENDMENT
(PRE-FILED)

2lr0893

By: **Delegate Smigiel**

Requested: November 9, 2011

Introduced and read first time: January 11, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **State and Local Government – Officials and General Assembly Members –**
3 **Legislative Privilege Exception**

4 FOR the purpose of proposing an amendment to the Maryland Constitution to allow
5 the use of evidence of legislative acts in a criminal prosecution of a member of
6 the General Assembly for bribery of a public officer; providing an exception to
7 the prohibition on the bringing of a civil or criminal action against a local
8 official for certain words spoken by an official during certain meetings of certain
9 local public bodies for criminal prosecution of a local official for bribery of a
10 public employee; submitting this amendment to the qualified voters of the State
11 for their adoption or rejection; and generally relating to a legislative privilege
12 exception for officials of a local government and General Assembly members.

13 BY proposing an amendment to the Maryland Constitution
14 Article III – Legislative Department
15 Section 18

16 BY repealing and reenacting, with amendments,
17 Article – Courts and Judicial Proceedings
18 Section 5–501
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2011 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – Criminal Law
23 Section 9–201
24 Annotated Code of Maryland
25 (2002 Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, (Three-fifths of all the members elected to each of the two Houses
3 concurring), That it be proposed that the Maryland Constitution read as follows:

4 **Article III – Legislative Department**

5 18.

6 No Senator or Delegate shall be liable in any civil action, or criminal
7 prosecution, whatever, for words spoken in debate, **EXCEPT THAT NO SUCH**
8 **IMMUNITY OR LEGISLATIVE PRIVILEGE SHALL APPLY IN A PROSECUTION FOR**
9 **DEMANDING OR RECEIVING A BRIBE, FEE, REWARD, OR TESTIMONIAL TO**
10 **EITHER INFLUENCE THE PERFORMANCE OF, OR TO NEGLECT OR FAIL TO**
11 **PERFORM, THE OFFICIAL DUTIES OF A SENATOR OR DELEGATE.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
13 read as follows:

14 **Article – Courts and Judicial Proceedings**

15 5–501.

16 **[A] EXCEPT FOR AN ACTION UNDER § 9–201 OF THE CRIMINAL LAW**
17 **ARTICLE, A** civil or criminal action may not be brought against a city or town
18 councilman, county commissioner, county councilman, or similar official by whatever
19 name known, for words spoken at a meeting of the council or board of commissioners
20 or at a meeting of a committee or subcommittee thereof.

21 **Article – Criminal Law**

22 9–201.

23 (a) (1) In this section the following words have the meanings indicated.

24 (2) “Political subdivision” includes a:

25 (i) county;

26 (ii) municipal corporation;

27 (iii) bi-county or multicounty agency;

28 (iv) county board of education;

29 (v) public authority; or

1 (vi) special taxing district that is not a homeowner's association.

2 (3) (i) "Public employee" means an officer or employee of:

3 1. the State; or

4 2. a political subdivision of the State.

5 (ii) "Public employee" includes:

6 1. an executive officer of the State;

7 2. a judge of the State;

8 3. a judicial officer of the State;

9 4. a member or officer of the General Assembly;

10 5. a member of the police force of Baltimore City or the
11 Department of State Police; and

12 6. a member, officer, or executive officer of a political
13 subdivision.

14 (b) A person may not bribe or attempt to bribe a public employee to influence
15 the public employee in the performance of an official duty of the public employee.

16 (c) A public employee may not demand or receive a bribe, fee, reward, or
17 testimonial to:

18 (1) influence the performance of the official duties of the public
19 employee; or

20 (2) neglect or fail to perform the official duties of the public employee.

21 (d) A person who violates this section is guilty of the misdemeanor of bribery
22 and on conviction:

23 (1) is subject to imprisonment for not less than 2 years and not
24 exceeding 12 years or a fine not less than \$100 and not exceeding \$5,000 or both;

25 (2) may not vote; and

26 (3) may not hold an office of trust or profit in the State.

27 (e) A person who violates this section is subject to § 5-106(b) of the Courts
28 Article.

- 1 (f) (1) A person who violates this section:
- 2 (i) is a competent witness; and
- 3 (ii) subject to paragraph (2) of this subsection, may be compelled
- 4 to testify against any person who may have violated this section.
- 5 (2) A person compelled to testify for the State under paragraph (1) of
- 6 this subsection is immune from prosecution for a crime about which the person was
- 7 compelled to testify.

8 SECTION 3. AND BE IT FURTHER ENACTED, That the General Assembly

9 determines that the amendment to the Maryland Constitution proposed by Section 1

10 of this Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of

11 the Maryland Constitution concerning local approval of constitutional amendments do

12 not apply.

13 SECTION 4. AND BE IT FURTHER ENACTED, That the amendment to the

14 Maryland Constitution proposed by Section 1 of this Act shall be submitted to the

15 qualified voters of the State at the next general election to be held in November, 2012

16 for their adoption or rejection pursuant to Article XIV of the Maryland Constitution.

17 At that general election, the vote on this proposed amendment to the Constitution

18 shall be by ballot, and upon each ballot there shall be printed the words “For the

19 Constitutional Amendment” and “Against the Constitutional Amendment,” as now

20 provided by law. Immediately after the election, all returns shall be made to the

21 Governor of the vote for and against the proposed amendment, as directed by Article

22 XIV of the Maryland Constitution, and further proceedings had in accordance with

23 Article XIV.

24 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in

25 Sections 3 and 4 of this Act, this Act shall take effect June 1, 2012.